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December 1, 2020

**By Electronic Case File**

The Honorable Valerie Caproni  
United States District Judge  
Thurgood Marshall  
United States Courthouse, Courtroom 443  
40 Foley Square  
New York, NY 10007

**Re: Orlando Garcia Gil and Gustavo Martinez v. Danny Bensusan, Steve Bensusan,  
and Greenwich Village Entertainment Group, LLC  
Case 1:18-cv-10657-VEC**

Dear Judge Caproni:

We represent Danny Bensusan, Steve Bensusan, and Greenwich Village Entertainment Group, LLC (hereinafter, the “Defendants”) in the above-captioned matter. Pursuant to the Opinion and Order, dated October 30, 2019, which compelled this matter to arbitration, and along with counsel for the Plaintiffs we submit a joint update on the status of the arbitration proceeding.

Plaintiffs filed a Demand for Arbitration with the American Arbitration Association (“AAA”) on November 12, 2019. An arbitrator was appointed on February 5, 2020 to which Plaintiff’s counsel has objected. Due to the coronavirus, the AAA and the parties have delayed further proceedings and expect to resume shortly.

On June 23, 2020, Counsel for the Plaintiffs sent a status update to Jonathan Weed of the American Arbitration Association in a letter, signed and on official letterhead, in response to Mr. Weed’s request for a status update on the case. Defendants were copied on this notification. Plaintiffs’ June 23<sup>rd</sup> letter notified Mr. Weed and Defendants that Plaintiff Orlando Garcia Gil had died. On information and belief, we understand that Mr. Gil died at the latest in April 2020 of suspected COVID-19.

On November 30<sup>th</sup>, 2020 Plaintiff’s Counsel notified Defendants, for the first time, that he had spoken with Mr. Garcia Gil’s brother and informed him of the family’s right to have an administrator appointed and continue the litigation against the Defendants. However, Plaintiffs’ counsel has been unable to get in contact with Mr. Garcia Gil’s three children who live in Mexico and who are, upon information and belief, the heirs of the estate of Mr. Garcia Gil. To date, Orlando Garcia Gil’s heirs have not moved to identify any successor or representative who will be substituted for the decedent. Since it has been more than ninety (90) days since the June 23<sup>rd</sup> notice of the suggestion of death, Defendants respectfully requests that Mr. Gil be dismissed from the case pursuant to FRCP 25(a)(1).

Plaintiffs' Counsel asserts the June 23<sup>rd</sup> notice notifying the Defense Counsel of Plaintiff Garcia Gil's death is not proper notice under FRCP 25(a)(1) as it was not served pursuant to FRCP 4 and FRCP 5 and the heirs to the estate of Mr. Garcia Gil have not received such notice. Pursuant to New York case law, Defendants disagree that service was improper and that the suggestion of death must be served on Mr. Gil's heirs, wherein the legal successors had not been identified.

Additionally, on November 6<sup>th</sup>, 2020 Plaintiffs' counsel received a consent to change attorney form signed by Plaintiff Gustavo Martinez and the law firm of Elefterakis Elefterakis and Panek. Plaintiffs' counsel is in the process of turning over the file to incoming counsel and such transfer should occur in the next two weeks.

Very truly yours,

\s\Kenneth Kirschner  
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Cc: Brett M. Schatz, Esq.  
Maria Benvenuto, Esq.